

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

Emilio Bautista-Serrano, )  
Plaintiff, ) Civil Action No. 6:11-2870-RBH -KFM  
vs. )  
Kenney Atkins, Warden and Mr. Clark, )  
Counselor, )  
Defendants. ) **REPORT OF MAGISTRATE JUDGE**

This matter is before the court on the plaintiff's motion to amend (doc. 26). The plaintiff, a federal prisoner proceeding *pro se*, claims the defendants discriminated against him because he is Mexican, violating his constitutional rights. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(A) and Local Civil Rule 73.02(B)(2)(e) DSC, all pretrial matters in cases involving *pro se* litigants are referred to a United States Magistrate Judge for consideration.

The plaintiff first explains that he seeks to amend his complaint to indicate that he is suing the defendants under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), rather than 42 U.S.C. § 1983 (m. to amend at 2). The defendants do not object to this amendment in that it is purely technical in nature.

The plaintiff also seeks to name defendant John Clark in his capacity as counselor. The plaintiff named Clark as a defendant in his official capacity as a counselor in his original complaint (see comp. at 1-2, doc. 1). Accordingly, such an amendment of the complaint is unnecessary.

Lastly, the plaintiff seeks to dismiss defendant Kenny Atkinson<sup>1</sup> from the case (m. to amend at 1-3), to which the defendants have no objection.

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<sup>1</sup> In his complaint (doc. 1), the plaintiff initially named Mr. Atkinson "Kenney Atkins" as a defendant.

Wherefore, based upon the foregoing, this court recommends that the plaintiff's motion to amend be granted in part to indicate that the complaint is brought under *Bivens* and that defendant Atkinson be dismissed from the case at the plaintiff's request.

IT IS SO RECOMMENDED.

March 21, 2012  
Greenville, South Carolina

s/ Kevin F. McDonald  
United States Magistrate Judge

## **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
300 East Washington St, Room 239  
Greenville, South Carolina 29601

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).